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California.

Supreme Court.

The inheritance tax law,  
chapters LXXXV...

Sacramento

1905

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CALIFORNIA

... THE ...  
INHERITANCE  
.. TAX LAW ..

Chapters LXXXV and CCCXIV

LAWS  
OF .. 1905

IN EFFECT JULY 1, 1905

Containing extracts from decisions of Supreme Court  
of California touching the "Collateral Inheritance Tax  
Law" of March 23, 1893, and amendments thereto.

COMPILED AND DISTRIBUTED BY  
E. P. COLGAN, STATE CONTROLLER.

CALIFORNIA

# THE INHERITANCE TAX LAW

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SACRAMENTO

W. W. SHANNON, - - Superintendent State Printing

1905

Classification or Indication of Relationship.	Property Exemption.	APPLICATION OF RATES TO VALUE OF INHERITANCE OR BEQUESTS				
		On Excess After Deduction of Exemption from \$25,000.	\$25,000 to \$50,000.	\$50,000 to \$100,000	\$100,000 to \$500,000.	In Excess of \$500,000.
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child..	Widow or minor child, \$10,000. Others, \$4,000.	1%	1½%	2%	2½%	3%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.....	\$2,000	1½%	2½%	3%	3½%	4½%
Uncle, aunt, or descendant of either.....	\$1,500	3%	4½%	6%	7½%	9%
Grand uncle, grand aunt, or descendant of either.....	\$1,000	4%	6%	8%	10%	12%
Other degree of collateral consanguinity, stranger in blood, body politic or corpo- rate.....	\$500	5%	7½%	10%	12½%	15%

## THE INHERITANCE TAX LAW.

CHAPTER LXXXV, LAWS OF 1905—*An act to amend section 1669 of the Code of Civil Procedure of the State of California, relating to payment of taxes and decrees of distribution of estates.*

### Payment of taxes before distribution of estate.

Section 1669. Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county and municipal taxes, legally levied upon property of the estate, and any inheritance tax which is due and payable, have been fully paid.

CHAPTER CCCXIV, LAWS OF 1905—*An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled "An act to establish a tax on collateral inheritances, bequests, and devises, to provide for the collection, and to direct the disposition of its proceeds," approved March 23, 1893, and all amendments thereto, and all acts and parts of acts in conflict with this act.*

### Property subject to inheritance or transfer tax—Power of appointment taxable.

SECTION 1. All property which shall pass, by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor, vendor or bargainer,

or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as herein-after directed, for the use of the State; and such tax shall be and remain a lien upon the property passed or transferred until paid and the person to whom the property passes or is transferred and all administrators, executors, and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

**Property not in excess of \$25,000 in value—Classification of relationship—Primary rates of taxation.**

SEC. 2. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

(1.) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this State, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, *provided, however*, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2.) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of one and one half per centum of the clear value of such interest in such property.

(3.) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4.) Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5.) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

**Classification of values in excess of \$25,000—Rates of taxation.**

SEC. 3. The foregoing rates in section two are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1.) Upon all in excess of \$25,000 and up to \$50,000, one and one half times the primary rates.

(2.) Upon all in excess of \$50,000 and up to \$100,000, two times the primary rates.

(3.) Upon all in excess of \$100,000 and up to \$500,000, two and one half times the primary rates.

(4.) Upon all in excess of \$500,000, three times the primary rates.

#### Exemptions.

SEC. 4. The following exemptions from the tax are hereby allowed:

(1.) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

(2.) Property of the clear value of ten thousand (\$10,000.00) dollars transferred to the widow or to a minor child of the decedent, and of four thousand (\$4000.00) dollars transferred to each of the other persons described in the first subdivision of section two shall be exempt.

(3.) Property of the clear value of two thousand (\$2000.00) dollars transferred to each of the persons described in the second subdivision of section two shall be exempt.

(4.) Property of the clear value of one thousand five hundred (\$1500.00) dollars transferred to each of the persons described in the third subdivision of section two shall be exempt.

(5.) Property of the clear value of one thousand (\$1000.00) dollars transferred to each of the persons described in the fourth subdivision of section two shall be exempt.

(6.) Property of the clear value of five hundred (\$500.00) dollars transferred to each of the persons and corporations described in the fifth subdivision of section two shall be exempt.

#### Life estates—Estates determinable upon future events.

SEC. 5. When any grant, gift, legacy, or succession upon which a tax is imposed by section one of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section fourteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; *provided*, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the State of California, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said superior court may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the County Clerk of the proper county; *provided further*, that such person shall make a full and verified return of such property to said court, and file the same in the office of the County Clerk within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years.

#### Bequests to executors or trustees.

SEC. 6. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions



herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

#### **Taxes due and payable at death—Interest.**

SEC. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section five of this act for the payment of said tax, together with interest.

#### **Penalty and interest.**

SEC. 8. The penalty of ten per cent per annum imposed by section seven hereof, for the non-payment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such cases only seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

#### **Administrators to deduct amount of tax.**

SEC. 9. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to

deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

#### **Power of administrators to sell property for tax.**

SEC. 10. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as herein-after directed.

#### **Tax to be paid to County Treasurer—Receipt must be countersigned by State Controller.**

SEC. 11. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator, or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator, or trustee shall immediately send to the Controller of the State, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said Controller shall seal said receipt with the seal of his office, and countersign the same, and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and

countersigned by the Controller, or a copy thereof, certified by him, and file the same with the court.

#### **Refund of tax.**

SEC. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not been paid to the County Treasurer or to the State Controller, or by them, if it has been so paid.

#### **Assignment, transfer or delivery of stock or obligations— Notice to County Treasurer.**

SEC. 13. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets of a decedent, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the County Treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets of the estate of a non-resident decedent including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may thereafter be assessed on account of the delivery or transfer of such

securities, deposits, or other assets including the shares of the capital stock of or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless the County Treasurer consents thereto in writing. And it shall be lawful for the said County Treasurer, personally, or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of two times the amount of the tax and penalty due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer; and the payment as herein provided shall be enforced in an action brought in accordance with the provisions of section seventeen of this chapter.

#### **When value of inheritance or bequest is uncertain— Appraisement—Expense of same.**

SEC. 14. When the value of any inheritance, devise, bequest, or other interest subject to the payment of said tax is uncertain, the superior court in which the probate proceedings are pending, on the application of any interested party, or upon its own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice, by mail, to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the market value of all inheritances, devises, bequests, or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to

all parties known to be interested therein; and the value of every future or contingent or limited estate, income, or interest shall, for the purposes of this act, be determined by the rule, method, and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the Insurance Commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income, or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the County Treasurer out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

**Appraiser shall not take fee or reward—Penalty therefor.**

SEC. 15. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or imprisoned in the county jail ninety days, or both, and in addition thereto the court shall dismiss him from such service.

**Superior court to have jurisdiction.**

SEC. 16. The superior court in the county in which is situate the real property of a decedent who was not a resident of the State, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and

determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other.

**Failure to pay tax—Issue of citation—Duty of County Clerk.**

SEC. 17. If it shall appear to the superior court, or judge thereof, that any tax accruing under this act has not been paid according to law, it shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax or any person or corporation liable under the law for the payment of said tax to appear before the court on a day certain, not more than ten weeks after the date of such citation, and show cause why said tax should not be paid. The service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, of title eleven, of part three of the Code of Civil Procedure; and the clerk of the court shall, upon the request of the District Attorney or Treasurer of the county, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the County Clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred and seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

**Refusal or neglect to pay tax—Duties of County Treasurer and District Attorney.**

SEC. 18. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the District Attorney of the proper county, in writing, of such failure to pay such tax, and the District Attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the superior court, as provided in section seventeen of this act, for the enforcement and collection of such tax.

**Controller to furnish records—Duty of County Clerk.**

SEC. 19. The Controller of State shall furnish to each County Clerk a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application has been made to the superior court for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence, and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The County Clerk shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by the court under this statute, and the value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will or otherwise, as fixed by the superior court, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this statute filed with him. The County Clerk shall, on the first day of January, April, July and October of each year make a report, in duplicate, upon forms to be furnished by the Controller of State, containing all the data and matters required to be entered in such book, and also of the property from which, or the party from which, he has reason to believe the tax under this act is due and unpaid, one of which shall be immediately delivered to the County Treasurer and the other transmitted to the State Controller.

**Expense of serving citation.**

SEC. 20. Whenever the superior court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen of this act, the State Treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred for services of citation, and his other lawful disbursements that have not otherwise been paid.

**Duty of County Treasurer.**

SEC. 21. The treasurer of each county shall collect and pay the State Treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the Controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the Controller may prescribe; and for all such taxes collected by him and not paid to the State Treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

**County Treasurer's commissions.\***

SEC. 22. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum on the first fifty thousand dollars so paid and accounted for by him, one and one half per centum on the next fifty thousand dollars so paid and accounted for by him, and one half of one per centum on all additional sums so paid and accounted for by him.

**County Treasurer to employ special attorney—Compensation.**

SEC. 23. The treasurer of each county, in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys, as he may deem necessary, who shall have all the authority conferred upon the District Attorney by sections seventeen and eighteen of this act, and such attorney shall be paid for his services out of the fees now allowed the treasurer as provided in section twenty-two of this act, and that in no case shall such compensation exceed the per centum allowed as such fees.

\* Section 215 of the "County Government Act" as amended March 21, 1905 (Chapter CDXXXI, Laws of 1905), provides as follows: "That the treasurer shall receive and retain for his own use the commissions on all inheritance and transfer taxes collected by him, and provided further, that whenever the treasurer of any county shall employ a special attorney for the collection of such taxes said attorney shall be paid out of the commissions and fees allowed by law for the collection of such taxes."

**Copy of tax receipt—Fee for same.**

SEC. 24. Any person, or body politic or corporate, shall, upon payment of the sum of fifty cents, be entitled to a receipt from the County Treasurer of any county, or a copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office in the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be labeled "inheritance tax."

**Disposition of proceeds from tax.**

SEC. 25. All taxes levied and collected under this act, up to the amount of \$250,000 annually, shall be paid into the treasury of the State, for the uses of the state school fund, and all taxes levied and collected in excess of \$250,000 annually shall be paid into the State Treasury to the credit of the general fund thereof.

**Failure or refusal to perform duties—Penalty.**

SEC. 26. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the State of California the sum of one thousand dollars, to be recovered in an action brought by the Attorney-General in the name of the people of the State on the relation of the Controller.

**Repeal of "Collateral Inheritance Tax Law."**

SEC. 27. An act entitled "An act to establish a tax on collateral inheritances, bequests and devises, to provide for its collection, and to direct the disposition of the proceeds," approved March 23, 1893, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed.

**Definitions.**

SEC. 28. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property

or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the State. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

**Proceedings to enforce lien of tax—Duty of District Attorney.**

SEC. 29. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of this act the District Attorney of the county in which the estate of the decedent mentioned in this act is being administered or has been administered in probate proceedings, may, whenever any property of said estate has been distributed without the payment to the State of all or any part of the taxes payable on account thereof under this act, bring and prosecute an action or actions in the name of the State as plaintiff, for the purpose of enforcing such lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor or incumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

**Actions to quiet title.**

(a) Actions may be brought against the State for the purpose of quieting the title to any property, against the lien or

claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

**Where actions must be commenced.**

(b) All actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

**Service of summons in action against State.**

(c) Service of summons in the actions brought against the State shall be made on the Secretary of State and on the District Attorney of the county in which the estate of the

decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said District Attorney to defend all such actions.

**Procedure and practice.**

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

**Remedies.**

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

**Takes effect.**

SEC. 30. This act shall take effect and be in force from and after July 1, 1905.

## EXTRACTS FROM DECISIONS OF SUPREME COURT

Touching the "Collateral Inheritance Tax Law" of  
March 23, 1893.

### Constitutionality of Act.

The Act of March 23, 1893, imposing a tax of five dollars on every hundred dollars of the market value of property collaterally inherited, bequeathed, or devised, where its value exceeds five hundred dollars, is constitutional and valid. (*Estate of Wilmerding*, 117 Cal. 218.)

### Right of inheritance—Legislative control—Contribution to State.

The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely statutory, and within the control of the Legislature; and the same legislative authority that confers the right or privilege of inheritance or of testamentary disposition may attach to it the condition that a portion of the estate so received shall be contributed to the State. (*Estate of Wilmerding*, supra.)

### Classification of heirs—"Inheritance" and "Taxation" distinct subjects.

Section 1386 of the Civil Code does not make a classification of heirs with reference to any legislative object; and "inheritance" and "taxation" have no necessary connection as subjects of legislation; and the Legislature, having plenary authority in reference to each of these subjects, is not required to consider them together, nor to shape its legislation concerning one with reference to the other, nor to observe the same classification for purposes of taxation that is made for purposes of inheritance. (*Estate of Wilmerding*, supra.)

### Exemption of small estates—Taxation according to value—Excise tax—Legislative discretion.

The provision exempting estates valued at less than five hundred dollars from the collateral inheritance tax is valid, and the constitutional provision that all property shall be taxed in proportion to its value is inapplicable to such a tax, which is in the nature of an excise tax, the right to impose which includes the right to select the subjects upon which it shall be imposed, and there being no constitutional provision that such a tax shall be imposed upon every inheritance, the judgment of the Legislature that it is in the public interest that the collateral inheritance tax shall be imposed only upon such inheritances as exceed five hundred dollars in value is not open to review. (*Estate of Wilmerding*, supra.)

### Tax upon collateral inheritances, bequests, and devises—Constitutional law.

The Act of 1893 to establish a tax on collateral inheritances, bequests, and devises is constitutional and valid. (*Estate of Stanford*, 126 Cal. 112.)

### Vested right of State—Amendment of 1897 not retroactive.

By the operation of the Act of 1893 the tax on collateral inheritances, devises, and bequests accruing thereunder became immediately payable at the death of the decedent, and the right of the State thereto was vested upon such death, and could not be divested retroactively by the subsequent amendment and alteration of the statute made in 1897. (*Estate of Stanford*, supra.)

### Ownership of tax—Possession.

The State's ownership of such tax does not depend upon its payment, or possession thereof by the State, but only upon its right of possession, which accrued at the death of the decedent. (*Estate of Stanford*, supra.)

### Exemption of unpaid taxes before accrued—Special legislation—Donation from State.

The second section of the Act of 1897, which purports retroactively to exempt resident nephews and nieces, and educational and other benevolent corporations from the payment of unpaid taxes upon collateral inheritances, bequests, and devises, violates

Subdivision 17 of Section 25 of Article IV of the Constitution, forbidding special legislation releasing any existing obligation to the State, which cannot be done under the guise of a general law; and violates Sections 22 and 31 of the same article, prohibiting donations or gifts from the State of any property to any institution not under the exclusive management and control of the State, and of anything of value to any individual or corporation. (*Estate of Stanford*, supra.)

**Nieces and nephews—Amendment of 1897—Constitutional law.**

The amendment of 1897 to the collateral inheritance tax law (Stats. 1897, p. 77), so far as purporting to exempt therefrom nieces and nephews when residents of the State, is in conflict with Section 2 of Article IV of the Constitution of the United States, and with Section 1978 of the Revised Statutes of the United States, and is void; and by virtue of the invalidity of that amendment, all nieces and nephews were left subject to the collateral inheritance tax, as provided prior thereto. (*Estate of Mahoney*, 133 Cal. 180. *Estate of Stork*, Dec. 5, 1901, Cal. Decisions, Vol. XXII, No. 1237.)

**Estates of deceased persons—Collateral inheritance tax—Exemption of nephews and nieces—Constitutional law—Case reversed.**

The amendatory Act of 1897, exempting nephews and nieces of the deceased when resident of this State, is constitutional and valid. The case of *Estate of Mahoney*, 133 Cal. 180, is reversed on this subject [Beatty, C. J., dissenting]. (*Estate of Johnson*, 139 Cal. 532.)

**Construction of Constitution of United States—Privileges and immunities of citizens of State.**

Section 2 of Article IV of the Constitution of the United States, providing "that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," does not have the effect to strike down or limit or restrict the right of the State to confer any immunities or privileges upon its own citizens which it may choose to confer, but is merely protective, and measures the rights of citizens of other States, and becomes part of the law of this State conferring privileges upon its own citizens. (*Estate of Johnson*, supra.)

**Taxation—Province of Legislature—Power of court.**

It is for the Legislature alone to impose the burden of taxation, and the courts have no power to impose a burden of taxation not imposed by the Legislature. (*Estate of Johnson*, supra.)

**Estates of deceased persons—Collateral inheritance tax—Exception—Children of adopted daughter.**

Legacies in trust for the benefit of the children of the adopted daughter of a deceased testator are excepted from the provisions of the law establishing a tax upon "collateral inheritances, bequests and devises." (*Estate of Winchester*, 140 Cal. 468.)

**Collateral inheritance tax—Amendment of 1899—Constitutionality—Construction—Defect in body of act—Clerical error.**

There being no defect in the title of the amendment of 1899 to the amendatory act of 1897 to the Collateral Inheritance Tax Law of 1893, a defect in the body of the act consisting of a clerical error in the introductory clause of Section 1 of the amendment of 1899, in omitting the first clause of the title, must be disregarded, and the act held valid, upon principles of reasonable construction in favor of the constitutionality and validity of the amendment. (*Estate of Campbell*, 143 Cal. 623.)

**Amendment of section—Republication.**

Where the only section amended is Section 1 of the Act of 1897, it is not necessary to republish the entire act; but it is a sufficient compliance with Section 24 of Article IV of the Constitution to republish the section as amended. (*Estate of Campbell*, supra.)

**Uniformity of act—Natural distinction.**

The amendment of 1899 to the Collateral Inheritance Tax Law is general and of uniform operation in its application to the natural distinction of brothers and sisters of deceased persons. The fact that the wife of a son, the widow of a son, and the husband of a daughter who do not inherit are exempted from its provisions on the basis of close relation by affinity,



thus allowing them to take by bequest or devise, can not affect the general character and uniform operation of the amendment, as to collateral inheritance. (*Estate of Campbell, supra.*)

**Bequests and devises to strangers—Construction of statute.**

The tax imposed upon bequests and devises to strangers to the blood who are not related by affinity or of kin to the decedent, if the word "collateral" is to be construed as applying to bequests and devises, and not to "inheritances" only, is to be deemed "collateral," within the meaning of that word, in favor of the constitutionality of the act. (*Estate of Campbell, supra.*)

**Query as to word "collateral"—Limitation to "inheritances."**

It is questionable whether the word "collateral" should not be limited in its application to the word "inheritances," and not extended to the words "bequests" and "devises." (*Estate of Campbell, supra.*)

**Taxes upon transferred property—Taking effect at death—Separable provision.**

The provision in the act imposing taxes upon property transferred by deed, grant, sale, or gift, made to take effect in possession after the death of the decedent, if invalid, as not expressed in the title of the act, is separable, and is not so important to the effect of the act as a whole to render the entire section unconstitutional. (*Estate of Campbell, supra.*)

**Federal Constitution—Fourteenth amendment.**

The Act of 1899 does not contravene the provisions of the Fourteenth Amendment to the Constitution of the United States. The rule of that amendment as to equality is subject to the same principles of classification as those declared by this court under the Constitution of the State. (*Estate of Campbell, supra.*)

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END OF  
TITLE